APPENDIX.

Revenue Act of 1938, c. 289, 52 Stat. 447:

"SEC. 402. DEFINITION OF PERSONAL HOLDING COMPANY.

"(a) GENERAL RULE.—For the purposes of this title, and Title I, the term 'personal holding company' means any corporation if—

"(1) GROSS INCOME REQUIREMENT.—At least 80 per centum of its gross income for the taxable year is personal holding company income as defined in section 403; but if the corporation is a personal holding company with respect to any taxable year beginning after December 31, 1936, then, for each subsequent taxable year, the minimum percentage shall be 70 per centum in lieu of 80 per centum, until a taxable year during the whole of the last half of which the stock ownership required by paragraph (2) does not exist, or until the expiration of three consecutive taxable years in each of which less than 70 per centum of the gross income is personal holding company income; and

"(2) STOCK OWNERSHIP REQUIREMENT.—At any time during the last half of the taxable year more than 50 per centum in value of its outstanding stock is owned, directly or indirectly, by or for not more than five individuals.

* * * * *

"SEC. 403. PERSONAL HOLDING COMPANY INCOME.

"For the purposes of this title the term 'personal holding company income' means the portion of the gross income which consists of:

* * * * *

"(e) PERSONAL SERVICE CONTRACTS.—(1) Amounts received under a contract under which the corporation is to furnish personal services; if some person other than the corporation has the right to designate (by

name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and (2) amounts received from the sale or other disposition of such a contract. This subsection shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 per centum or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services."

* * * * *

Regulations 101, Article 402-2:

"Gross income requirement.—To meet the gross income requirement, it is necessary that either of the following percentages of gross income of the corporation for the taxable year be personal holding company income as defined in section 403:

"(a) 80 per cent or more; or

"(b) 70 per cent or more if the corporation has been classified as a personal holding company for any taxable year beginning after December 31, 1936, unless—

"(1) a taxable year has intervened since the last taxable year for which it was so classified, during no part of the last half of which the stock ownership requirement specified in section 402(a)(2) exists; or

"(2) three consecutive years have intervened since the last taxable year for which it was so classified, during each of which its personal holding company income was less than 70 per cent of its gross income.

"In determining whether the personal holding company income is equal to the required percentage of the total gross income, the determination must not be made upon the basis of gross receipts, since gross income is not synonymous with gross receipts. For a

further discussion of what constitutes 'gross income', see section 22 (a) and the regulations prescribed under that section."

Regulations 101, Article 403-1:

"Personal holding company income.—The term 'personal holding company income' means the portion of the gross income which consists of the following:

* * * * *

"(8) Amounts received under personal service contracts.—Amounts includible in personal holding company income as amounts received under personal service contracts consist of amounts received persuant to a contract under which the corporation is to furnish personal services, and amounts received from a sale or other disposition of such a contract, if—

"(a) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or if the individual who is to perform the services is designated (by name or by description) in the contract; and

"(b) at some time during the taxable year 25 per cent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description), as the one to perform such services. For this purpose the stock ownership must be determined as provided in section 404 and articles 404(a)-1 to 404(a)-7, article 404(b)-1 and the last paragraph of article 402-3.

"The application of section 403(a) may be illustrated by the following examples:

"Example (1): A, whose profession is that of an actor, owns all of the outstanding capital stock of the M Corporation. The M Corporation entered into a contract with A under which A was to perform personal services for the person or persons whom the

M Corporation might designate, in consideration of which A was to receive $10,000 a year from the M Corporation. The M Corporation entered into a contract with the O Corporation in which A was designated to perform personal services for the O Corporation in consideration of which the O Corporation was to pay the M Corporation $500,000 a year. The $500,000 received by the M Corporation from the O Corporation constitutes personal holding company income.

"Example (2): The N Corporation, the entire outstanding capital stock of which is owned by four individuals, is engaged in engineering. The N Corporation entered into a contract with the O Corporation to perform engineering services for the O Corporation, in consideration of which the O Corporation was to pay the N Corporation $50,000. The individual who was to perform the services was not designated (by name or by description) in the contract and no one but the N Corporation had the right to designate (by name or by description) such individual. The $50,000 received by the N Corporation from the O Corporation does not constitute personal holding company income."

* * * * *